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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 115

D. P. SKOUSEN, COIT HUGHES, H. B. HUGHES, H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA AND BRIEF IN SUPPORT THEREOF.

JOHN J. MCCULLOUGH,
Counsel for Petitioners.

E. E. SELDEN,
Of Counsel.

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TEXT CITED.

Cooley Taxation, 4th Edition, Vol. 4, p. 3012, Sec. 1548 8
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA, AND BRIEF IN REQUEST THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States, Greeting:

Your petitioners, D. P. Skousen, Coit I. Hughes, H. B. Hughes, and H. L. Mosher, respectfully pray for a Writ of Certiorari to review the judgment in the Supreme Court of the State of Arizona entered on the 13th day of January, 1941, reversing the judgment of the Superior Court of Maricopa County, State of Arizona, rendered on the 18th day of March, 1940. The Motion for Rehearing in the Supreme Court having been denied on February 10th, 1941.

Short Statement of Matter Involved.

This matter was commenced in the Superior Court of Maricopa County, State of Arizona, by the Consolidated Motors, Inc. filing a Complaint to Quiet Title to certain real property.

Your petitioner Skousen answered denying title in respondents and asserting title in himself. Petitioners Hughes, Hughes, and Mosher answered denying title in the respondents Consolidated Motors, Inc. The matter was tried before the court sitting without a jury and the plaintiff Consolidated Motors, Inc. introduced evidence purporting to show title by Tax Deed from the Treasurer of Maricopa County and to show that the property to which title was sought to be quieted had been properly sold to the State of Arizona for delinquent taxes, and by the said Treasurer of Maricopa County assigned from the State of Arizona to two different individuals, who held title to the two different pieces of land at the time the suit was brought, and later both of these individuals sold to the Consolidated Motors, Inc.

September 19 and 26, 1931—Lot 7 and Lot 8 were advertised.

July 11, 1932—Both lots "Struck Off" to the State of Arizona.

May 15, 1939—North half of Lot 8, deeded, by the Treasurer, to W. R. Wayland and Fred G. Holmes.

July 5, 1939—Lot 7 deeded, by the Treasurer to Del E. Webb.

July 24, 1939—Suit to Quiet Title filed by the Consolidated Motors, Inc.

July 26, 1938—North half of Lot 8, deeded by Wayland and Holmes to the Consolidated Motors, Inc.

September 12, 1939—Lot 7 deeded, by Del E. Webb to the Consolidated Motors, Inc.

Evidence was then introduced on behalf of your petitioners.

At the close of the whole case both your petitioners and the respondent moved for judgment.

The matter was taken under advisement by the Presiding Judge, M. T. Phelps, who rendered judgment in favor of your petitioners (R. 24).

Upon appeal the judgment of the said Superior Court was reversed.

The questions involved in the Superior Court, as well as upon appeal, were relative to the validity of the various steps taken in the procuring of the aforesaid Tax Deed by and through which respondents claim title.

It is contended by your petitioners that because of the decision of the Supreme Court of the State of Arizona in reversing the aforesaid judgment of the Superior Court petitioners were deprived of their property without due process of law.

The deprivation arose by reason of the decision of the said Supreme Court of the State of Arizona and is inherent in said decision viewed in the light of the evidence as the same was presented to the Supreme Court in the Reporter's Transcript of Testimony.

Statement Disclosing Jurisdiction of This Court.

This cause was commenced by complaint filed in the Superior Court of Maricopa County, State of Arizona.

Said complaint was filed for the purpose of quieting title to certain real property (two adjoining pieces) situate in Maricopa County, Arizona.

Petitioners denied title in the respondent and judgment was rendered for petitioners in the said Superior Court (R. 24).

The cause was appealed to the Supreme Court of the State of Arizona where the judgment of the said Superior Court was reversed on January 13th, 1941 (R. 96).

A Motion for Rehearing was duly filed and said Motion for Rehearing was denied on February 10, 1941 (R. 97). Three months have not yet elapsed since said date.

The Supreme Court is the highest court in the State of Arizona.

See:

Arizona Code Annotated 1939, Volume 1, page 123; the Constitution of Arizona, Article VI, Section 1; and at page 125, of said Arizona Code Annotated 1939; the Constitution of Arizona, Article VI, Section 4.

The interpretation placed by the Supreme Court upon certain statutes of the State of Arizona, as well as the erroneous placing of the burden of proof, amounted under the evidence in the case to a taking of petitioners' property without due process of law.

The jurisdiction of the Supreme Court of the United States is therefore invoked by United States Code Annotated, Title 28, Sec. 344 (b), being Judicial Code Section 237, Amended.

Questions Presented.

1. The First Question presented is whether a decision of the Supreme Court of the State of Arizona stating that the burden of proof is upon one attacking a tax deed and not upon one claiming under it deprives the owner of his property without due process of law?

2. The Second Question presented is whether the assessment and advertisement for sale of your petitioners' property from an unrecorded map which describes the property by lots and blocks; whereas the so-called Official Map of the same premises, recorded, and introduced in evidence by your petitioners, shows that the property in dispute is not subdivided into lots, has no numbered blocks, and is

meticulously separated from the balance of the addition, of which it is a part, by dotted lines; without a showing that the owners of the land in controversy had any actual or constructive notice of such UNRECORDED MAP (filed in evidence by the respondents), constitutes a taking of property without due process of law?

3. The Third Question is whether the advertisement of Lot 8, Block 1, Churchill, as a single parcel of land and the redemption of one-half thereof, and the later issuance of a deed to an assignee of the State of Arizona, only for the North One Half of the so called Lot 8, Block 1, without any readvertisement thereof constitutes a taking of petitioners' property without due process of law?

Reasons for Allowance of Writ.

First Reason.

1. The Supreme Court of the State of Arizona has decided that upon the mere production of a Tax Deed the burden of proof, in Arizona, is upon him who attacks such deed to prove the invalidity thereof, rather than upon the proponent of the deed to prove the doing of all of the acts necessary to prove the validity thereof.

The taking of property by taxation has always been regarded as in the nature of a forfeiture and therefore the rights of the owner have always been zealously guarded.

It is the universal rule that, in the absence of statute, every step in the acquisition of a tax deed must be proved by the proponent and your petitioners submit that on account of the summary nature of such proceedings any other rule would amount to the taking of the property of the owner without due process of law.

Second Reason.

The opinion of the Supreme Court of the State of Arizona in this cause (R. 98) admits the land was assessed, adver-

tised and sold with reference to a map which the evidence shows was unrecorded (R. 103) and of which there was no showing, or attempt to show, that your petitioners, or the then owners of said premises had any actual notice. Only recorded instruments are constructive notice under the statutes of Arizona.

The taking of land for taxation purposes without proper notice to the owner is the deprivation of property without due process of law.

Third Reason.

The Supreme Court of the State of Arizona decided in its opinion in this cause that the treasurer of Maricopa County has the power to advertise and sell a lot as a single unit and then permit part thereof to be redeemed and issue a deed to the remainder of the lot to an assignee of the State of Arizona (holder of the Certificate of Purchase), without any readvertisement, or re-sale of the divided portion.

Such a procedure is in derogation of the Fourteenth Amendment to the Constitution of the United States and deprives the owner of his property without due process of law.

For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

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Petitioners.

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Associate Counsel.

BRIEF.

Opinion of the Supreme Court of the State of Arizona.

The Opinion rendered in this cause by the Supreme Court of the State of Arizona is found in 109 Pac. 2d at page 41.

Jurisdiction.

The facts upon which your petitioners rely for jurisdiction of this Court are fully set forth in the Petition for Writ of Certiorari, page 3 (In Certiorari), hereof, and for the sake of brevity incorporated in this brief by reference, only.

Facts.

The facts are also stated in the Petition, page 2 (In Certiorari).

Specification of Errors to Be Urged.

1. The Court erred in answering the first question relative to the burden of proof by stating that there is a presumption in proceedings for the collection of taxes that an officer has done his duty and that the burden of proving the contrary rests upon the assailant of the tax deed.

2. The Court erred in holding in answer to question No. 2 that the Assessor has a right to assess property, and the Treasurer had a right to advertise property for sale, according to a description on an unrecorded map used by the Assessor and differing from the map on file in the Recorder's Office of Maricopa County, Arizona, in that the particular lots and blocks attempted to be sold were delineated on the Assessor's unrecorded map, and not shown upon the recorded map, there being no evidence that the petitioners, or the then owners, had any actual or constructive knowledge of the existence of such unrecorded Assessor's Map and there being a Statute in Arizona laws making only recorded instruments constructive notice.

3. The Court erred in holding that the treasurer of Maricopa County, Arizona, is authorized to advertise and sell a parcel of land as a unit and permit the redemption of a part thereof and then without readvertisement or re-sale execute a deed to the assignee of the State of Arizona.

ARGUMENT.

Point I.

It is error to hold that the burden of proof in the absence of Statute is upon the person assailing a tax deed and since proceedings for the sale of property for delinquent taxes are in the nature of a forfeiture each step in the proceedings should be proved by a preponderance of the evidence or else the very trial amounts to a taking of property without due process of law.

Cooley Taxation, 4th Edition, Vol. 4, page 3012, Sec. 1548;
61 *Corpus Juris,* page 1369, Section 1948;
Williams v. *Peyton,* 4 Wheat. 77, 4 L. Ed. 518;
Thomas v. *Lawson,* 21 How. 331, 340, 18 L. Ed. 82;
Ganes v. *Dunn,* 14 Pet. 322, 10 L. Ed. 476;
Marx v. *Hanthorn,* 148 U. S. 172.

Point II.

It is deprivation of property without due process of law and contrary to the Fourteenth Amendment for property to be advertised and sold for delinquent taxes according to lots and blocks by a description taken from an unrecorded map of which the owner is not shown to have had actual or constructive knowledge, when the same property is shown upon the recorded map referred to in Respondent's Complaint, and the only recorded map introduced in evidence, as not being sub-divided into lots at all, and even the block

is not numbered in the recorded map which is headed as the:

> "Official Plat of the Resurvey of Churchill's Addition to the City of Phoenix, Maricopa County, Arizona Territory."

A certified photostatic copy of said "Official Plat" as it was introduced in evidence in the trial of this cause in the Superior Court of the County of Maricopa, State of Arizona, on behalf of your petitioners at the very outset of the trial of this cause.

That said "Official Plat" was introduced in evidence in the trial of this cause in the Superior Court is shown from the Opinion of the Supreme Court, itself (R. 102).

The Opinion also shows that a second map was introduced in evidence, by the respondent, on which the lots were shown.

A certified copy of both said maps is in the appendix to this brief marked as Exhibits "A" and "B", respectively.

The sole contention of the Arizona Supreme Court is that Section 3084 R. C. A. 1928, which may be found in Volume 5 of the Arizona Code Annotated 1939 at page 604, being Sections 73-413, empowers the Assessor to prepare maps and assess from these maps and thereafter the property may be advertised and sold by the Treasurer in accordance with such unrecorded maps.

It now is and has been from the very outset of this matter in the Superior Court strenuously contended by your petitioners that the Assessor has no power and no right to draw unrecorded maps describing, and thus virtually dedicating, the land in a different manner from the way in which the land is shown upon the recorded, official map. That even if the Assessor can prepare maps which differ from the Official Map in essential particulars he cannot assess land, nor

can the Treasurer, basing his proceedings upon such assessment, advertise land for sale in accordance with such maps when they differ from recorded, dedicatory, or official maps.

We contend that—Section 3084 R. C. A. 1928; Arizona Code Annotated 1939, at page 604, Sections 73-413 (*supra*); gives the Assessor the unquestioned right to REPRESENT on a map, kept in his office, for his convenience, CONDITIONS as they EXIST, but gives him NO RIGHT TO CREATE CONDITIONS, and such an act of CREATING CONDITIONS AND BOUNDARIES, AND STREETS AND ALLEYS, as he thinks they OUGHT TO BE, and numbering lots and blocks as he thinks they ought to be numbered, or as some other municipal corporation or political subdivision thinks they OUGHT TO BE, is not only taking property without due process of law but is not giving the owner of the "Assessorially Dedicated" land the equal rights of the owner of such land with the owners of other land which is assessed and taxed (and possibly sold) exactly as it is subdivided by themselves, or prior owners, as shown by RECORDED plats.

We also contend that when the Assessor draws maps, even from recorded maps, he must make his assessments from maps that show descriptions that have been signed by owners, or their authorized agents, and if there are none such he must make his assessments by the usual method for undedicated tracts, by metes and bounds.

It is petitioners' contention that the maps which the Assessor is authorized to draw are supposed to be in conformity to the "recorded plats" and are for use only in order that the Assessor may have a convenient and permanent record for HIS OWN USE upon which he may "check off" the various subdivisions as they are assessed, and that it was never intended that a subdivision which has never been officially divided into lots and blocks may be so

designated on the Assessor's own plat and then sold according to this arbitrary description.

Said Section 3084 R. C. A. 1928, reads as follows:

> "The assessor shall also have prepared maps of the various blocks within any city or town or any addition thereto, of each surveyed township, and of the surveyed mines of each mining district, upon which maps he shall check off the various subdivisions as they are assessed, and in each subdivision he shall mark the name of the person to whom assessed. Said maps shall be a permanent record of the county and the cost thereof shall be a county charge."

The Opinion says:

> "Under this section it was proper for the assessor to assess the lots in question from this map, NOTWITHSTANDING THAT THE ORIGINAL MAP OF CHURCHILL'S ADDITION FOUND IN BOOK 2 OF MAPS IN THE RECORDER'S OFFICE SHOWED BLOCK 1 NOT SUBDIVIDED INTO LOTS, and we think that under the provisions of section 56, Chapter 103, supra, the description was sufficient." (Capitals ours. R. 103.)

Section 56 of Chapter 103 of the laws of 1931 so far as applicable, provides:

> "No want of description or misdescription, or irregularity in the description of the property assessed upon the roll, if it can be ascertained or proved what property is intended, shall invalidate the assessment."

The interpretation which the Supreme Court of the State of Arizona has placed upon these sections of the Arizona Code of 1928 is, we submit, erroneous and in effect deprives your petitioners of their property without due process of law.

When the law says that the only description required is one from which the identity of the property can be "ascer-

tained or proved", this must be taken to mean ascertained or proved by reference to some recorded map.

It would be arbitrary and unreasonable to suppose that this section means, proved by means of a map drawn by the assessor himself and unrecorded.

If it be assumed that the assessor could draw a map showing lots not designated upon the official plat it certainly would be necessary in such a case to describe the land in all the tax proceedings with a specific reference to the assessor's map, otherwise where the official map shows no division into lots at all the uncertainty would void all the proceedings.

People ex rel. National Park Bank v. *Metz,* 126 N. Y. S. 986, 141 App. Div. 600 last paragraph on page 992 at bottom of 992 and top of 993;

Houghton v. *Kern Valley Bank,* 157 Cal. 289, 107 Pac. 113;

McLaughlin v. *Bonynge,* 15 Cal. A. 239, 114 Pac. 798 at page 799 Col. (3).

The fundamental rule in any description for the purpose of taxation is that the property must be so described as to give the owner notice that his land is to be sold and most courts hold that the land must be so described with reference to a recorded map.

Joliet Stove Works v. *Kiep,* 230 Ill. 550, 82 N. E. 875;

State ex rel. and to the use of Jennings v. *Hamilton,* 293 S. W. 378 (Mo.);

Matteson v. *Warwick Water Company,* 28 R. I. 570, 68 A. 577.

However there is an exception to this rule in a Nebraska case where the parties had sold and leased property with reference to an unrecorded map for a long period of time.

Roads v. *Estabrook,* 53 N. W. 64 (Neb.).

In the instant case there is no evidence to show that your petitioners, or their predecessors, had any knowledge even of the unrecorded map. The evidence fails to show that the former owner ever received any actual notice of the sale at all (R. 62, 63, 79, 80), and the evidence is even insufficient to prove mailing notice (R. 59, 63, 65, 66, 79, 80).

There are two other Arizona Statutes which throw some light on this question.

Arizona Annotated Code 1939, Section 17-1818,

being

Revised Code of Arizona of 1928, Section 3210,

restricts the dedication of City lots to the owners and requires that all conveyances shall thereafter be described with reference to such recorded plat.

Said Statute is set forth *haec verba* in the Appendix hereto, at page 20 of the Petition for Certiorari.

Since the issuance of the Treasurer's Deed to a private person is surely a conveyance of the property we submit that the description therein cannot be with reference to an unrecorded map.

There is still another section of the

Revised Code of Arizona 1928,

which should be cited and that is

Annotated Code of Arizona 1939 Section 71-426,

where only recorded documents are made constructive notice of their existence.

The error which is inherent in the Opinion of the Supreme Court of Arizona in this cause in construing Revised Code of Arizona, 1928, Section 3084 goes much deeper, however, than its mere repugnancy to other sections of our local statutes.

The logical effect of the decision of the Supreme Court of Arizona is to cause the Assessor of Maricopa County, Arizona, to lift himself by his own boot straps.

The Assessor is charged with making the assessment or levy and of course in order to make such assessment he must have proper maps to work from. It is fundamental that the property must be assessed according to a proper description yet the Supreme Court of Arizona has said in effect that the assessor can make his own description and write it on his own map which is merely a necessary part of the machinery for assessment and which is not recorded and this makes the description correct.

In effect the assessor must correctly describe the property, but if it is incorrectly described by the assessor the description is correct, nevertheless, because the assessor wrote the erroneous description into his assessment map.

The logical effect of this dilemma might have been avoided if the property had been advertised for sale with reference to the assessor's unrecorded map or if it had been shown that the assessor's map had ever been recognized by the owners of the property.

The very contrary of this is the case. The property was advertised merely as lots 7 and 8, Block 1, Churchill (R. 68, 69) and the very complaint under which the respondent is seeking to quiet title describes the premises by metes and bounds for certainty and with reference to the Recorded Map.

To this must be added the fact that evidence of the existence of any other subdivision by the name of "Churchill Annex" or just "Churchill" was specifically ruled out upon objection of the respondent (R. 61).

In view of all these matters the description of the property in all of the tax proceedings was insufficient and contravenes the fundamental requirements of due process of law.

Point III.

The third point as the second concerns the interpretation of a section of the Arizona Statutes, to-wit:

> Section 42 of Chapter 103 of the Session Laws of Arizona 1931 to be found in Volume 5, Annotated Code of Arizona 1939 at page 656 Section 73-828,

and reading as follows:

> "Any person owning an interest less than the whole in any real property, may redeem such interest by paying the proper proportionate part of the whole amount due, and shall receive a certificate of redemption for such interest in the manner herein provided."

The above statute is quoted *haec verba* in the opinion of the Supreme Court of Arizona (R. 105) and the court in its opinion has missed the true meaning of this law and given to it a meaning which clearly deprives the owner of his property without due process of law, or any process of law at all.

It is the view of the Arizona Supreme Court as evidenced by the opinion in this cause (R. 105) that the words

> "Interest less than the whole in any real property"

means that if a person becomes the owner of one half of the actual physical property as the same can be divided by metes and bounds or otherwise that such person can redeem his one half (½) from a sale of the whole parcel of land as a unit by the payment of one half of the taxes.

The error inherent in such a view is that John Doe who becomes the owner of one half of a lot does not have any interest in the "lot" viewed as a unit. He has an interest only in one half a lot, i. e., he owns the one half outright. In the remaining one half of the lot which has been sold as a unit for taxes he has no interest whatsoever and there-

fore John Doe does not have any undivided interest in the real property as contemplated by

> Section 42 of Chapter 103, of the Session Laws of 1931

as quoted above.

The true meaning of the law is that the interest must be some undivided inferest in the "whole" property as a "Unit" as it was sold, such as that of tenants in common, or joint tenants and can not apply to the owner of a certain portion of the ground itself.

The view taken by the Supreme Court of Arizona clearly sanctions the taking of the property without due process of law. For if, by way of analogy, the north half of lot X were worth ten times as much as the south half and the taxes of John Doe both real and personal were assessed against the whole of lot X and said lot was sold as a unit for such taxes; and if Richard Roe should foreclose his mortgage against the north one half of lot X; Richard Roe may redeem the north one half by paying one half of the taxes and John Doe must pay the other half of the taxes to redeem the south one half of lot X which is perhaps not worth the taxes against it. The south one half of lot X has never been assessed for taxes as a unit, it has never been advertised for sale and has never been sold at public auction or at all. Clearly John Doe in such a case would be deprived of his property without due process of law and the decision of the Supreme Court of Arizona in this very case has said that whereas lot 8, Block 1, Churchill, was advertised for sale and sold as a "unit" for taxes, that nevertheless, the south one half of said lot was redeemed by the then owner upon payment of one half of the taxes, and a deed was thereafter issued by the said treasurer to the remaining north one half. In the mean time and long prior to the giving of the said treasurer's deed, your petitioner

Skousen had become the owner of the north one half of the property by way of foreclosure and sale. (R. 76, 77). The issuance of the treasurer's deed to the north one half of lot 8, Block 1, Churchill, clearly deprived your petitioner Skousen of his property without due process of law for The North One Half of Lot 8, Block 1, Churchill has Never been Assessed for Taxes, Advertised nor Sold, Every feature of due process of law is, not merely insufficient, But Wholly Lacking.

It is imperative by

> Section 18 of Chapter 103, Session Laws of Arizona 1913,

being found in

> Volume 5 of Arizona Code Annotated 1939, page 639 Section 73-804

that the property must be described in the Notices of Tax Sale as it is described on the Tax Roll. The north one half of Lot 8, Block 1, Churchill, never even appeared upon the Tax Roll.

When the description in the deed does not even appear upon the Tax Roll it has been squarely held by the United States Supreme Court that the deed is absolutely void.

Bird vs. *Benlisa,* 142 U. S. 664.

From this case we quote at page 667:

> "The collector can only sell the lands as described on the assessment roll * * * Section 20 above, only extends its protection to the lands assessed, because, if other lands, or lands differing materially in description, are deeded by the clerk, THE DEED IS NOT A DEED MADE IN PURSUANCE OF A SALE OF LANDS FOR TAXES; NOR IS A SUIT FOR THE RECOVERY OF POSSESSION THEREOF A SUIT FOR LANDS SOLD FOR TAXES."

See also:

Raymond vs. *Longworth*, 14 How. 76; 14 L. Ed. 333.

> "If the property intended to be assessed is but a part of a larger tract this fact must be made to appear on the assessment roll for a description of the larger tract alone is not a sufficient description of its parts."

61 *Corpus Juris Section* 889.

It is clear beyond per adventure that no property can be properly valued, and no fair sale, and indeed no sale at all can take place where the various parcels of land to be sold are not separated from the very beginning, appraised, taxed, advertised and sold as units. As to the north one half (½) of Lot 8, Block 1, Churchill, petitioners have surely been deprived of their property without due process of law by reason of the interpretation placed upon Section 42, Chapter 103, of the Laws of 1931, by the Supreme Court of Arizona as set forth in its decision herein (R. 105).

Summary.

Your petitioners are relying in this petition and brief for Certiorari upon the contention that the decision of the Supreme Court of Arizona deprives them of their property without due process of law for three reasons, to-wit:

1—The Supreme Court of Arizona has indulged in the presumption that an officer in a proceeding for the sale of property for delinquent taxes is presumed to do his duty and the burden is upon the assailant of a tax deed even in the absence of statute.

This position is at least erroneous as a general proposition of law and tends to show how far the court is willing to go in an attempt to uphold a very doubtful sale and we think should be persuasive with this Honorable Court even

if it should conclude that the burden of proof does not come within the purview of the Fourteenth Amendment.

2—The second point is that the Supreme Court of the State of Arizona has interpreted Section 3084 R. C. A. 1928, see opinion (R. 103) in such a fashion as to permit the assessor to virtually dedicate land and in this particular case to take your petitioners' property without due process of law.

3—The third point is that the Supreme Court of the State of Arizona has interpreted Section 42 of Chapter 103 of the laws of 1931 so as to deprive petitioners of their property without due process of law (R. 105).

The first point relied upon, namely, the burden of proof, may not involve a privilege or immunity claimed under the Constitution of the United States, but if your petitioners' interpretation of the Arizona Statutes involved in the second and third points is correct then it is clear that by reason of each of these said interpretations your petitioners have been deprived of their property without due process of law.

WHEREFORE it is respectfully submitted that a Writ of Certiorari should issue in this cause.

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APPENDIX.

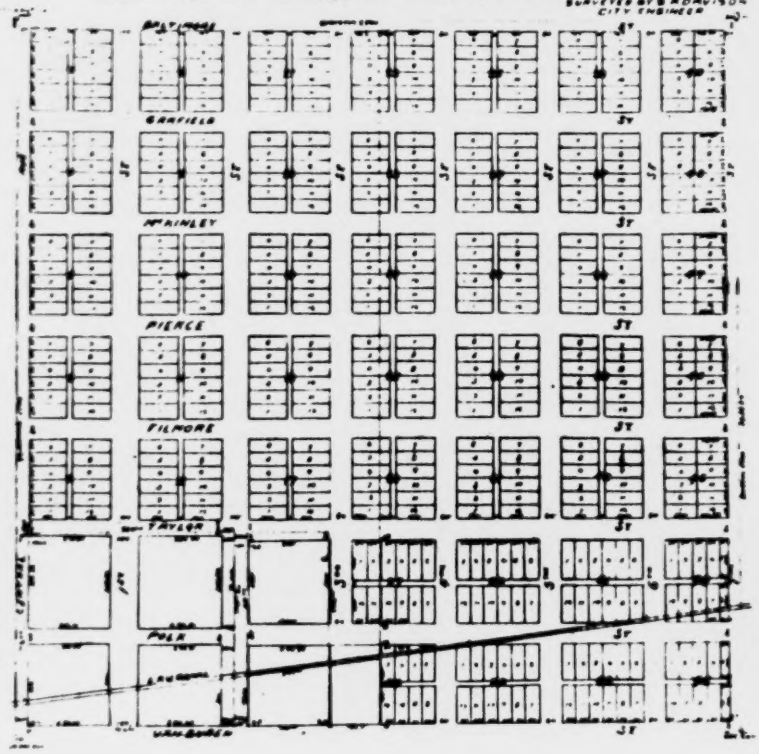
Arizona Annotated Code 1939, Section 17—1818, being Revised Code of Arizona 1928, Section 3210.

"Any owner of a tract of land desirous of platting or subdividing the same into tracts of twenty acres or less for the purpose of townsites, shall first have the same surveyed and platted, showing lots, blocks, or subdivisions, size of each lot, name and width of each street, and width of alleys, and shall dedicate the streets, public grounds and alleys to the public use, sign said dedication and acknowledge the same as conveyances of real property, and file said plat in the office of the county recorder for record. No property shall be described in any conveyance or other instrument by reference to any plat of any townsite, addition or subdivision, or any lot, block or parcel contained therein, unless such plat has been executed, acknowledged and recorded as herein provided."

OFFICIAL PLAT
OF THE RESURVEY OF
CHURCHILL'S ADDITION
TO THE CITY OF PHOENIX
MARICOPA COUNTY, ARIZONA TERRITORY.

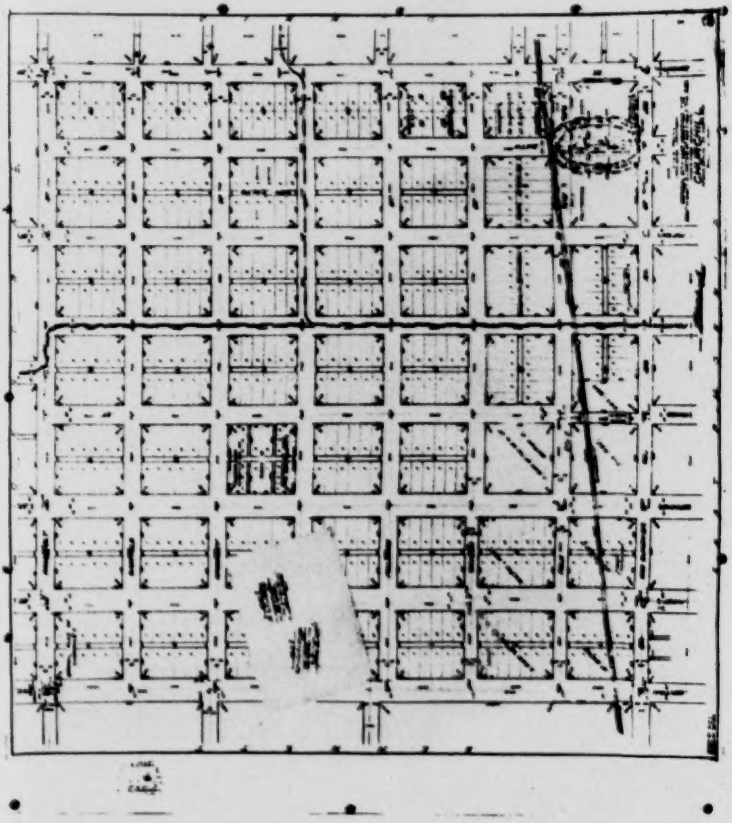
BEING ALL OF THE SE QUARTER (SE¼) OF SECTION FIVE (5) TOWNSHIP ONE (1) NORTH, RANGE THREE (3) EAST OF THE GILA-SALT RIVER BASE-MERIDIAN

SURVEYED BY S. A. DAVISON CITY ENGINEER



DEDICATION.

Be it known that I, [illegible], owner of the above described property, do hereby dedicate to the use of the public forever all streets and alleys shown on this plat and hereby dedicate to the use of the public forever all streets and alleys shown on this plat and hereby dedicate to the use of the public forever all streets and alleys shown on this plat and



OCTOBER TERM, 19

No. 115

D. P. SKOUSEN, COIT HUGHES, H. B. [illegible]
H. L. MOSHER,

CONSOLIDATED MOTOR

BRIEF OF RESPONDENTS IN O
PETITION FOR WRI

MAT[illegible]
[illegible] Counsel

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 115

D. P. SKOUSEN, COIT HUGHES, H. B. HUGHES
H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Supreme Court of the State of Arizona, filed January 13, 1941, is reported in 109 Pac. 2d 41 and appears at page 98 of the record herein. Rehearing was denied February 10, 1941 (Tr. 97).

Statement of the Case

Respondent brought action in the Superior Court of Maricopa County, Arizona, to quiet title to certain prop-

erty in Phoenix, Maricopa County, Arizona, basing its claim to title on tax deeds issued by the State of Arizona. Issue was joined on the question of the validity of the tax sale. The trial court, after hearing on the merits, gave judgment for petitioners. The Supreme Court of Arizona, on appeal, reversed the judgment of the trial court with instructions to enter judgment quieting respondent's title. A petition for rehearing was denied by the Supreme Court of Arizona.

Summary of Argument

The Petition should be denied because:

1. No federal right, title, privilege or immunity was specially set up or claimed in the state court and no federal question was raised, presented or determined in the state court.
2. No federal question is presented by the Petition filed in this Court.

Argument

1.

The Petition should be denied because:

> No federal right, title, privilege or immunity was specially set up or claimed in the state court and no federal question was raised, presented or determined in the state court.

An examination of the record will disclose that no federal right, privilege or immunity was asserted in the state court nor determined by that court.

No proper case is therefore presented to this Court for review.

Judicial Code, Par. 237; 28 U.S.C. 344(b).

Lynch et als v. New York, 293 U. S. 52; 55 S. Ct. 15; 79 L. Ed. 191.

Mellon v. O'Neil, 275 U. S. 212; 48 S. Ct. 52; 72 L. Ed. 45.

Whitney v. California, 274 U. S. 357; 47 S. Ct. 641; 71 L. Ed. 1095.

2.

The Petition should be denied because:

No federal question is raised by the Petition filed herein.

(a) Petitioners' first question.

The decision of the Supreme Court of the State of Arizona in construing the tax laws of Arizona as placing the burden of proof on one attacking the validity of a tax sale, where the right to rebut such presumption by evidence is not denied, raises no question of due process of law.

Turpin v. Lemon, 187 U. S. 51; 23 S. Ct. 20; 47 L. Ed. 70.

Minneapolis etc. R. Co. v. Minnesota, 193 U. S. 53; 24 S. Ct. 396; 48 L. Ed. 614.

United States v. Illinois Cent. R. Co., 291 U. S. 457; 54 S. Ct. 471; 78 L. Ed. 909.

Straus v. Foxworth, 231 U. S. 162; 34 S. Ct. 42; 58 L. Ed. 168.

Saranac Land etc. Co. v. Roberts, 177 U. S. 318; 20 S. Ct. 642.

(b) Petitioners' second question.

The property was assessed according to a map prepared by the County Assessor pursuant to Section 3084, Revised Code of Arizona, 1928. See Appendix. The state court held the description of the property sufficient under the Arizona statute. No federal question is presented.

See cases under (a), supra.

Ontario Land Co. v. Yardy, 212 U. S. 152; 29 S. Ct. 278; 53 L. Ed. 449.

Dimitry v. Lewis, 150 Miss. 818; 117 So. 265; 278 U. S. 578; 49 S. Ct. 81; 73 L. Ed. 511.

The argument of petitioners (petitioners' brief, pages 8 to 14) raises only a local question,—that is, the construction of a state statute.

(c) Petitioners' third question.

When the tax was levied and assessed both Lots Seven (7) and Eight (8) were under one ownership. Subsequent thereto but before the issuance of a tax deed the petitioner, D. P. Skousen, acquired title to Lot Seven (7) and the north one-half (N1-2) of Lot Eight (8) by foreclosure. Prior to the issuance of a tax deed

the owner of the south one-half (S1-2) of Lot Eight (8) redeemed pursuant to Section 42, Chapter 103, Session Laws of Arizona, 1931 (73-828, Arizona Code Annotated, 1939). See Appendix. The period for redemption having expired and no redemption having been made as to Lot Seven (7) and the north one-half (N1-2) of Lot Eight (8), a tax deed was issued to respondent.

No question of due process is presented.

See cases cited under (a), supra.

Conclusion

It is respectfully submitted that the Petition fails to present grounds sufficient to authorize the issuance of a Writ of Certiorari and the Petition should be denied.

Respectfully submitted,

CHARLES L. STROUSS

MARK WILMER
Of Counsel.

Appendix

Section 3084, Revised Code of Arizona, 1928:

> "*Sec. 3084. Assessor to prepare block maps.* The assessor shall also have prepared maps of the various blocks within any city or town or any addition thereto, of each surveyed township, and of the surveyed mines of each mining district, upon which maps he shall check off the various subdivisions as they are assessed, and in each subdivision he shall mark the name of the person to whom it is assessed. Said maps shall be a permanent record of the county and the cost thereof shall be a county charge."

Section 42, Chapter 103, Session Laws of Arizona, 1931:

> "Section 42. Any person owning an interest less than the whole in any real property, may redeem such interest by paying the proper proportionate part of the whole amount due, and shall receive a certificate of redemption for such interest in the manner herein provided."

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Office - Supreme Court, U. S.
FILED
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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 115

D. P. SKOUSEN, COIT I. HUGHES, H. B. HUGHES, AND H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA.

REPLY BRIEF FOR PETITIONERS.

JOHN J. MCCULLOUGH,
Counsel for Petitioners.

E. E. SELDEN,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 115

D. P. SKOUSEN, COIT I. HUGHES, H. B. HUGHES, AND H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

REPLY BRIEF OF D. P. SKOUSEN, COIT I. HUGHES, H. B. HUGHES, AND H. L. MOSHER, IN RESPONSE TO RESPONDENT'S BRIEF.

Summary of Argument.

1. The opinion of the State court must be considered as a part of the record in certiorari proceedings, and the opinion in the instant case shows that your petitioners were deprived of their property without due process of law.

2. There are two Federal questions squarely raised by the record in this cause.

ARGUMENT.

Jurisdiction.

When it does not appear elsewhere in the record the Supreme Court will consider the opinion of the lower court to determine if Federal question was considered or not.

Rector v. *City Deposit Bank,* 200 U. S. 405, 412;
Haire v. *Rice,* 204 U. S. 291, 299;
Chambers v. *Baltimore, etc., Railroad,* 207 U. S. 142, 148;
Atchison etc. Railway v. *Lowers,* 213 U. S. 55, 62;
North Carolina Railroad v. *Zachary,* 232 U. S. 248, 257;
Chicago etc. Railway v. *Perry,* 259 U. S. 548, 551.

The minimum requirement of due process of law has always been recognized to be that the proceedings must be in accord with natural justice.

Where the description of property is insufficient to identify it with reasonable certainty the proceedings will be held void.

Ontario Land Co. v. *Wilfong,* 162 Fed. 999, 223 U. S. 543, 56 L. Ed. 544.

Therefore when the State court said (R. 102, 103) that a description according to an unrecorded map, of which the appellants were not shown to have had any knowledge, and in a summary proceeding, is sufficient, the existence or nonexistence in the instant case, of due process of law is inherently and of necessity the real bone of contention.

When the State court further said (R. 105), that although a lot was sold as a unit, that one half thereof can be redeemed and then a deed issue to the remaining one-half, the question of due process of law is necessarily involved because the one half a lot for which the deed was issued had never been assessed, advertised, nor sold.

It was impossible, of course, for your petitioners to raise the question of due process of law by motion for new trial in the Supreme Court of the State; or in the assignments of error, for the reason that the lower court decided in favor of petitioners, and as the complaint failed to disclose the foundation of respondent's claim (R. 1) there was no opportunity afforded for petitioners to raise the question of due process of law in the taxation proceedings, until the failure to observe the fundamental principles of such due process was pointed out at length in the opinion of the Supreme Court of the State of Arizona, itself, and the very matters which constitute such deprivation of due process are referred to as the questions in the case.

Under such circumstances it would seem to be in the interest of justice that this Court should exercise its discretion to consider the matters involved upon the certiorari.

Moreover in the instant case the matter of a proper description is an indispensable part of notice, and lack of all notice is lack of due process.

Our Supreme Court decided that the notice was sufficient; this decision was essential to the case and necessarily implied that the proceedings accorded your petitioners due process of law, for no notice is or can be sufficient unless it is in accord with natural justice. Had our Supreme Court decided that the description was insufficient to give notice this would have been tantamount to finding lack of the essence of due process. It was not necessary for the opinion to speak of due process of law in so many words for the interpretation which the court placed upon two sections of the Arizona Code Annotated 1939, in and of itself, necessarily, in this particular case, deprived your petitioners of due process of law.

In support of this contention petitioners make particular reference to the cases of

Chambers v. *Baltimore and Ohio R. R. Co.*, 207 U. S. 142;

and of

Haire v. *Rice,* 204 U. S. 291;

from which cases we quote as follows:

Case 1 (*Chambers'* case)

"The Supreme Court held that the action authorized by this statute for the death was that of a citizen of Ohio; that the common law of the State forbade such action; and that as the person, for whose death damages were demanded in this case, was not a citizen of Ohio, the action would not lie. The plaintiff brings the case here on writ of error, ALLEGING THAT THE STATUTE THUS CONSTRUED AND THE JUDGMENT BASED UPON THAT CONSTRUCTION VIOLATES ARTICLE IV, SECTION 2, PARAGRAPH 1, OF THE CONSTITUTION OF THE UNITED STATES, which provides that

> 'The citizens of each state shall be entitled to all privileges and immunities of citizens of the several states.'

"This allegation presents the only question for consideration. * * *. But it clearly and unmistakably appears from the opinion of the Supreme Court that the Federal question was assumed to be in issue, was decided against the claim of Federal right, and that the decision of the question was essential to the judgment rendered. This is enough to give this court the authority to reexamine the question on writ of error.

San Jose' Land and Water Company v. *San Jose' Ranch Company,* 189 U. S. 177;
Haire v. *Rice,* 204 U. S. 291."

Chambers v. *Baltimore & Ohio R. R.,* 207 U. S. 142 at 148. (CAPITALS OURS.)

Case 2 (*Haire* case)

"Where it clearly and unmistakably appears from the opinion of the state court under review that a

Federal question was assumed by the highest court of the state to be in issue, was actually decided against the Federal claim, and the decision of the question was essential to the judgment rendered, it is sufficient to give this court authority to reexamine that question on writ of error.

San Jose' Land & Water Company v. *San Jose' Ranch Company,* 189 U. S. 177."

Haire v. *Rice,* 204 U. S. 291 at 299.

Opinion as Depriving Petitioners of Due Process.

Second. Your petitioners were deprived of due process of law because

a—the property was advertised for sale according to an unrecorded map prepared by the assessor, or, the map speaks on its face (see the petition at page 22), which may be in the catefory of a map made under the provisions of Section 3084, Arizona Code of 1928. However, these petitioners hold such law gives the assessor the right to delineate conditions as they exist and that the using of such a map on his part, if upheld by the courts would create a law permitting assessorially dedicated plats with streets and alleys therein. These petitioners were deprived of their DUE PROCESS in a summary proceeding and without claim of either constructive, or actual, notice to the petitioners of its existence.

b—Lot 8 Block 1, of Churchill, was advertised and struck off to the State of Arizona as a unit and thereafter the South Half was redeemed by the owner of the said South Half and some five months laters the appellees demanded from the treasurer the redemption money which was paid to them and acepted by them. Thus they ratified the redemption as to themselves but the owner of the North Half has never yielded his position that this redemption was an infringement of his personal rights under the Constitution

in accordance with others similarly situated. The law required that the segregated North Half should be then advertised as a unit in itself.

Then without advertising, or notice of any kind to the owner, the treasurer issued a deed to the North Half, only to Wayland and Holmes, predecessors of respondent.

On the question of the UNRECORDED Assessor's Map, set forth in Part a, the respondent relies largely upon the case of

Ontario Land Co. v. *Yardy*, 212 U. S. 152, 29 S. Ct. 278.

We think the decision in that case was predicated upon two facts, neither of which exists in the instant case.

First. In the *Yardy* case the plaintiff knew that the authorities were attempting to assess and tax the "Reserved" tract under the description of blocks 352, etc.

Second. It appears from the *Yardy* case that there had been a foreclosure proceeding and judgment of a competent court, foreclosing the lien of the State for taxes.

The nearest approach to an identical case to the one at bar upon the facts, as far as your petitioners have been able to find, is the case of

Smith v. *City of Los Angeles, et al.*, 158 Cal. 702, 112 Pac. 307 at 308, 309;

from which we quote as follows:

QUOTATION.

> "There is no claim that the state board ever required any of these things. The copy of the map contained in the transcript shows that it does not comply with such requirements, if they were made, except that the number of acres inclosed by some of the lines marked thereon are indicated by figures followed by the letter 'A.' The map shows the outlines of a part of the Rancho Los Feliz, but not all of it. These are crossed

by North and South lines and East and West lines, dividing the portion platted into squares of equal size inside and fractional parts of squares next to the exterior bounds. There is no evidence that these lines are founded on any survey or that the rancho was ever surveyed and subdivided into lots corresponding to these squares by the owner, or by the assessor, or at all. Section 3629 of said Code authorizes the assessor to exact a statement from each landowner containing an exact description of his lands in parcels and subdivisions, not exceeding 640 acres each. Section 3634 provides that if the owner fails to do this, or fails to give a sufficient description, the assessor may obtain from the superior court an order requiring the county surveyor to survey the land and define the subdivision for the assessor. There is no evidence that this was done or that the assessor's map represents any such survey. The maps and plat provided for by section 3654 were not intended to represent any actual survey, or surveys. The owners are not consulted in their preparation nor allowed any opportunity to see that they are correct, and they are not binding upon him. They are mere compilations embracing the entire county made under the direction of the board of supervisors, or by the assessor, upon such information as may be at hand. THEY ARE DESIGNED MERELY TO FACILITATE THE BUSINESS OF THE OFFICE, AS A CONVENIENT EXHIBITION OF ALL THE LANDS IN THE COUNTY TO WHICH THE OFFICERS CAN REFER IN THE DAILY ROUTINE OF BUSINESS.

It is not shown that the subdivisions indicated on the map by the parallel lines have ever been marked on the ground, or that they coincide with the section lines outside the rancho, or that they can be located by any visible marks or markings or at all.

THEY ARE MERE ARBITRARY LINES DRAWN ON PAPER IN SOME OFFICE WITHOUT ANY REFERENCE WHATEVER TO ACTUAL CONDITIONS ON THE PREMISES * * *.

> The picture has no counterpart on the surface of the land. It cannot serve to identify the land, for the location of the tracts indicated cannot be ascertained."

This quotation bears out exactly the argument made in petitioners' opening brief and shows the reason why a map prepared by the assessor, identical to the assessor's map introduced in evidence in the instant case is no notice of the descriptions therein contained, and the opinion of our State Supreme Court holding that a description based upon such a map is sufficient deprives your petitioners of their property without due process of law.

On the Question of Re-advertising as Set Forth in Part — b.

No response whatever is made to the showing of petitioner D. P. Skousen that he was deprived of his equity of redemption in the North Half of Lot 8, Block 1, without due process of law.

Under our law redemption can be made at any time prior to the actual issuance of a deed by the county treasurer.

Petitioner Skousen was not injured by the redemption of the South one-half of Lot 8 by its owner, but when this South one-half was redeemed it became incumbent upon the assessor to re-assess the North one-half for the purpose of taxation or else the owner would be deprived of his property without any semblance of process of law whatever, as petitioners have shown in the petition and brief on certiorari.

Conclusion.

It is respectfully submitted that the record shows that questions involving the necessary requisites of due process of law were decided by the State Supreme Court and that

the grounds specified in the petition are sufficient and a writ of certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioners,

612 Luhrs Tower,
Phoenix, Arizona.

E. E. SELDEN,
Of Counsel.

(6331)